FOREWORD

HIS EXCELLENCY JUDGE CHRISTOPHER WEERAMANTRY*

A fascinating feature of the development of modern environmental law is the way in which, from being a tender sapling three decades ago, it has achieved enormous growth, striking out a multitude of fresh shoots and branches, and sinking its roots deeper into the substratum of juristic principles and traditional wisdom regarding the subject.

The many-faceted nature of the developments now taking place in environmental law makes it an encyclopaedic subject of study. New concepts and principles, such as obligations *erga omnes*, intergenerational rights, the common heritage of mankind, the precautionary principle, the requirement of anticipatory impact assessment, sustainable development and the principle of trusteeship of earth resources, call for detailed study and development. Special areas of application, such as the sea, the rainforests, the atmosphere and stratosphere, Antarctica and outer space, all call for specialist attention. The role of non-governmental organisations, the World Bank, the United Nations and its various agencies, needs to be closely studied, as must the international politics and the economic forces surrounding the subject. Multilateral treaty-making on environmental matters is proceeding so vigorously that keeping abreast of treaty provisions and their interpretation has become a study in itself.

Moreover, scientific advances in a thousand different areas of physics, chemistry, biology, nuclear science, mining techniques, cybernetics, genetic engineering, and atmospheric studies, to name but a few, have to be harnessed in the cause of preserving the environment from new depredations, and rescuing it from damage already done. Each scientific advance raises a crop of ethical and legal issues which were not visualised before, for scientific knowledge, once uncovered, tends often to be exploited for maximum profit by those able to command it. When so used, it can well be employed for purposes damaging to the environment. New legal principles are thus called for to handle this new source of damage, but the law is slow-moving and tends always to lag behind science.

Philosophical perspectives need to be examined to give a sound jurisprudential base to the new principles that are being evolved. There are many legal concepts regarding rights of ownership, freedom of contract, the nature of land tenure and the notion of individual rights which need to be subjected to searching scrutiny in view of the new environmental realities which force us now to re-examine some of their basic assumptions. All of these concepts, valuable in themselves, cannot be given unlimited rein in their operation. They must take account of the fact that

* BA, LLD (London), LLD (*honoris causa*) (Colombo); Vice-President, International Court of Justice, The Hague.

the exponential rate of assault on our environment is often aided by the false belief that these individually-oriented legal concepts hold sway even in the face of compelling socially-related environmental concerns. It is for those concerned with environmental law to point out relevant limitations on these rights which are necessitated by environmental considerations — considerations which we must consider imperative if humanity is to survive.

There is also a human rights dimension to all environmental studies, for whatever human right one may care to name — be it the right to health, the right to motherhood or the right to life itself — needs to be underpinned by the right to an environment that makes the exercise of these rights possible. Moreover, environmental law also places a special emphasis on duty — the duty to do what one can to preserve the environment, as opposed to the concentration on rights alone. And once one enters the sphere of human duties, there is the question also of *collective* duties — duties which each group or society owes *collectively* — to act together to protect and safeguard the environment. Important juristic considerations are involved in this aspect of the problem.

Another area needing exploration is the much neglected topic of customary law and traditional practices. These need to be explored, for the environmental wisdom acquired by humanity over the centuries was scorned and despised by modern science in its overreaching advances, and by modern law in its overconfident self-centredness. Environmental studies thus take us also into the fields of history and pre-history, for the principles underlying environmental law are not new. It is an ancient concept rediscovered, for humanity has, in many cultures, learned to harmonise its activities with the environment, so that one complements and supports the other. In this fashion, they have coexisted for centuries and, indeed, for millennia. Over the past few centuries, we have forgotten this wisdom and, with the increasing power made available to us by science and technology, have sought to exploit the environment as if it were a limitless resource. I have stressed this aspect in my Separate Opinion in the *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*.[1]

Ancient wisdom, present in all cultures — in Australasia and the Pacific no less than in other parts of the world, and among the Aboriginal people of Australia no less than any others — viewed the environment as a living thing in a symbiotic relationship with man. When the first was healthy, so was the second. When the first sickened and died, so did the second. The environment was never viewed as the passive servant of man to be whipped into compliance to suit man's whims and fancies. The rejection of these traditional attitudes has got us into our present plight. There may be great value in turning to ancient wisdom to show us some guidelines towards the rescue of both our environment and ourselves.

Australia is the home of humanity's oldest known traditions relating to the principles and practices by which harmony may be achieved and preserved between humanity and the environment. Forty thousand years ago, this was realised and human activity was guided accordingly over this vast period of time,

[1] *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment)* (1998) 37 ILM 162, 204 ('*Danube Dam Case*').

to enable a stable lifestyle to be maintained in harmony with the environment upon the driest continent on earth. Conservation of natural resources was deeply ingrained in Aboriginal culture, and its reverence for nature as our prime source of sustenance comes through as a prime theme in all its artistic efforts.

Nor must it be thought that the Aboriginal people were without their own technology or their schemes of development. To quote a modern Australian text on engineering:

> There were remarkable Aboriginal water control schemes at Lake Condah, Toolondo and Mount William in south-western Victoria. These were major engineering feats, each involving several kilometres of stone channels connecting swamps and watercourses.
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> At Lake Condah, thousands of years before Leonardo da Vinci studied the hydrology of northern Italian lakes, the original inhabitants of Australia perfectly understood the hydrology of the site. A sophisticated network of traps, weirs and sluices was designed to take advantage of rising and falling waters, allowing eels to be caught throughout the year. The traps were built at different levels so that as the water rose and fell, different traps progressively came into operation.[2]
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> ...
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> At Toolondo, an elaborate system of water control was developed ... The system was designed to retain water during droughts and to cope with excess water during floods ... The chairperson of the Aboriginal Culture Centre ... believes that fish traps on the Barwon River could be one of the oldest human-made structures on Earth. The traps are believed to have stretched over 400 metres of rapids, and were set at different levels to suit varying river heights.[3]

What is important is that in their culture the protection of the environment was central to human activities.

The Pacific area is also replete with those traditions of respect for the environment, as I learnt when researching Pacific customs, as part of the work of the Nauru Commission.[4] It is fitting therefore that Australia should take a leading role in environmental studies, and this volume is evidence that this vital area of study is receiving due attention.

From the standpoint of international law, environmental considerations are breaking through the comfortable assumptions of state autonomy on which modern international law has been built. The Westphalian vision of world order was based on a vision of the state as master of all that occurred within its borders, able to regulate its internal affairs and to repel the prying eyes and meddling fingers of external forces. Two burgeoning areas of modern law — both of enormous importance — which are exposing the fallacies of these assumptions are human rights law and environmental law. Under their joint impact, the seemingly impregnable walls which surrounded the concept of the nation state are weakening — and this is a trend which has enormous implications for the future world order. The felling of the Brazilian rainforests is as much the concern

[2] Stephen Johnston et al, *Engineering & Society: An Australian Perspective* (1995) 35–7.

[3] Ibid 37, citing Josephine Flood, *Archaeology of the Dreamtime* (1983) 208.

[4] Christopher Weeramantry, *Nauru: Environmental Damage under International Trusteeship* (1992) ch 10.

of Russia as a defective nuclear reactor in Russia is the concern of Brazil. The interests of all the world's citizens are intertwined in inextricable ways, which environmental law demonstrates almost better than any other — and hence those who further the study of environmental law are playing a vital role in building that better world order of the future which we all desire.

In short, environmental law has an interface area with about every discipline one may care to name. It is refreshing to note that the present symposium covers an impressive range of these varied aspects that are part of the study of modern environmental law.

The philosophical perspectives resulting from a consideration of the Western liberal property concept, the fast developing concept of sustainable development, methods of coping with the atmospheric problems created by exhaust emissions from motor vehicles, corporate responsibility for environmental damage, environmental management systems and regulatory reform, and the interaction of international conservation principles on domestic land law are as good a sampling of environmental law-related topics as one can put together in a volume of these dimensions. The volume is also up-to-date in regard to the latest jurisprudence of the International Court of Justice, through its consideration of the environmental law implications of the *Danube Dam Case*.

It is vitally important that interest in the subject be stimulated among law students who will, in the next generation, bear the responsibility of administering legal systems which must cope adequately with environmental problems if humanity is to survive. Likewise, it is vitally important that knowledge of the urgency of these problems be spread among the general public. Both these purposes will be served by this most useful and timely publication. The papers collected in this volume provide a very substantial study of topics from across the entire spectrum of environmental law.

I congratulate the editors of this volume, and the authors of these studies on the very useful contribution they have assembled for furthering our knowledge of environmental law. I hope it will enrich the thinking and stimulate the interest of law students throughout Australia and further afield, in regard to one of the most vital and rapidly developing areas of modern law, both domestic and international.